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Supreme Court of the United States

October Term, 1955

No. 348

DAVID RINES, individually and as administrator of Estate of Lucy L. Rines, *Appellant*,
v.
THE HONORABLE JUSTICES OF THE SUPERIOR COURT
and
WILLIS A. NEAL, as he is clerk of the Superior Court in and for the County of Norfolk. *Respondents.*

No. 11,497
On the Docket of the Supreme Judicial Court of the Commonwealth of Massachusetts.

DAVID RINES, Administrator of the Estate of Lucy L. Rines, *Appellant*,
v.
MARY GILMORE, *Respondent.*

DAVID RINES, *Appellant*,
v.
BETH ISRAEL HOSPITAL ASSOCIATION, *Respondent.*

No. 11,502
On the Docket of the Supreme Judicial Court of the Commonwealth of Massachusetts.

DAVID RINES, *Appellant*,
v.
ESTHER BURGIN, *Respondent.*

DAVID RINES, *Appellant*,
v.
MARY GILMORE, *Respondent.*

APPEALS FROM THE SUPREME JUDICIAL COURT FOR THE COMMONWEALTH OF MASSACHUSETTS

JURISDICTIONAL STATEMENT

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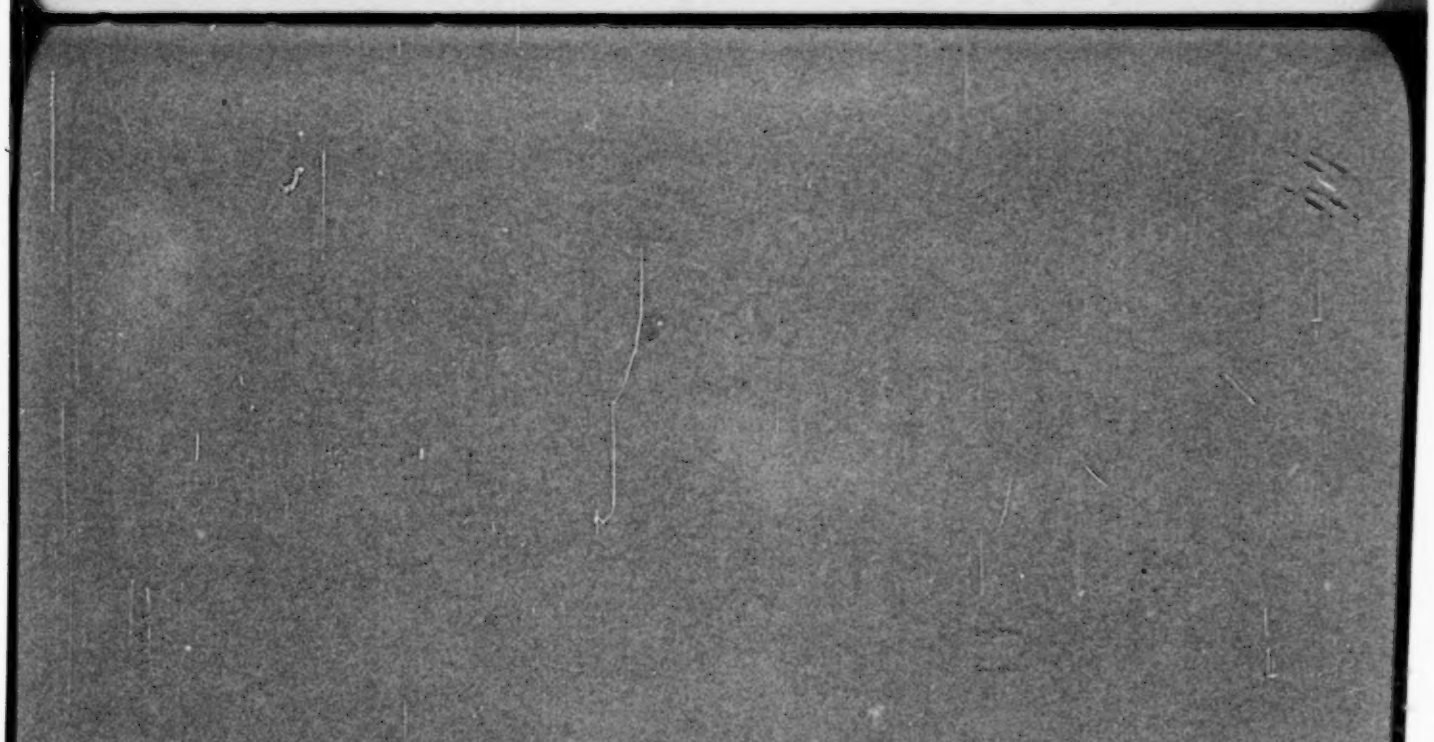

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Supreme Court of the United States

October Term, 1955

No. .....

DAVID RINES, individually and as administrator of Estate of Lucy L. Rines, *Appellant*, v. THE HONORABLE JUSTICES OF THE SUPERIOR COURT and WILLIS A. NEAL, as he is clerk of the Superior Court in and for the County of Norfolk, *Respondents.*	No. 11,495 On the Docket of the Supreme Judicial Court of the Commonwealth of Massachusetts.
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APPEALS FROM THE SUPREME JUDICIAL COURT FOR THE COMMONWEALTH OF MASSACHUSETTS

JURISDICTIONAL STATEMENT

The appellant, David Rines, individually and as administrator of the estate of his wife, Lucy L. Rines, appealing from the two final rescripts or judgments, dated April 18, 1955, of the Full Court of the Supreme Judicial Court for the Commonwealth of Massachusetts, overruling his exceptions in two cases numbered, on the docket of the Supreme Judicial Court, No. 11,495 and No. 11,508*, submits, under the provisions of Rule 15(3), this single Jurisdictional Statement, to show that the Supreme Court of the United States has jurisdiction of these two appeals and that substantial federal questions are presented.

OPINIONS BELOW IN THESE AND COMPANION CASES

These appeals are two only of a number of companion appeals, several of which are already before this Court, numbered as follows:

No. 694, October Term, 1954;
No. 187, October Term, 1955; and
No. 188, October Term, 1955.

This Court dismissed No. 694, October Term, 1954, but a petition for rehearing is pending.

The opinion of the Supreme Judicial Court in No. 11,495 is reproduced as Appendix A, reported, Advance Sheets, 1955, page 453.

No. 11,508 was disposed of by the Supreme Judicial Court by an unreported order, as follows:

David Rines, administrator, *vs.* Mary Gilmore (and three companion cases). April 18, 1955. Exceptions overruled. These are four identical petitions brought in the Superior

* No. 11,508 is a consolidated case that arose in the Superior Court as four cases, Nos. 56,191, 56,192, 56,193 and 56,195.

Court to vacate judgments entered for the defendants in four actions and to stay and supersede the executions for costs issued thereunder. The petitions were heard by a judge upon an "Agreed Statement of Facts." They come here upon exceptions to the denial of them. There was no error. The four actions which are the subject matter of the petitions were tried in the Superior Court with twelve other actions, all of which are referred to in *Rines* v. *Clerk of the Courts for the County of Norfolk,* decided by us this day. The only argument the petitioners make in their one page brief is an assertion that "The petitions should be allowed because, as explained in a companion brief, No. 11495 [*Rines* v. *Clerk of the Courts for the County of Norfolk, supra,* which was argued with these cases], the litigation is not yet terminated." But in that case we pointed out that all bills of exceptions and all petitions to establish exceptions and all other proceedings in the tort actions which have been brought to our attention have been disposed of by this court so that nothing remains or is now pending in the Superior Court or in this court to prevent the entry of judgments for the defendants and the issuance of executions in the cases at bar. There remain for trial in the Superior Court two actions in which motions for a new trial were allowed but those cases at this time present no questions of law not heretofore disposed of.

JURISDICTION

The rescripts or judgments of the Supreme Judicial Court in the said two cases, No. 11,495 and No. 11,508, were dated and entered April 18, 1955. Notices of appeal were filed July 15, 1955.

The jurisdiction of the Supreme Court of the United States to review these decisions by the Supreme Judicial

Court by direct appeal is conferred by 28 U.S.C., Section 1257(2).

Some of the grounds upon which this appeal is based, if taken alone, would have been more appropriately considered under 28 U.S.C., Section 1257(3). They are proper to be included, however, under the decision of this Court in *Flournoy* v. *Wiener*, 321 U.S. 253, 263. A separate petition for certiorari would appear to be unnecessary in view of 28 U.S.C., Section 2103.

The following decisions sustain the jurisdiction of the Supreme Court to review the rescripts or judgments on direct appeal in these cases: *Dahnke-Walker Milling Company* v. *Bondurant*, 257 U.S. 282, 290, *Richfield Oil Corp.* v. *State Board of Equalization*, 329 U.S. 69, 86, *Illinois ex rel. McCollum* v. *Board of Education of School District No. 71, Champaign County, Illinois*, 333 U.S. 203, 206.

The federal questions were raised before a single justice of the Supreme Judicial Court, in No. 11,495, by the very first pleading, a Petition for Writ of Mandamus.

THE STATUTES INVOLVED

These two appeals involve the validity, as applied in these two cases, of two statutes of the Commonwealth of Massachusetts, chapter 231, sections 113 and 117, of the General Laws, Tercentenary Edition, referred to herein as the first and second statutes, respectively. These are reproduced in Appendix B.

Insofar as the emphasis to be placed by the present two appeals is concerned, the following summary may be in order.

The first statute, section 113, provides that: first, exceptions may be alleged by any party aggrieved by a ruling

of a judge of the Superior Court, in any civil cause tried by a jury, and shall be filed with the clerk of the Superior Court; secondly, the judge shall examine the exceptions, upon their presentation to him, and, after hearing the parties, determine whether they are conformable to the truth; and, thirdly, if the presiding judge finds that the exceptions are conformable to the truth, he shall allow them.

The second statute, section 117, provides that, if the judge of the Superior Court disallows or fails to sign and return the exceptions, the excepting party may thereupon file, before the Full Court of the Supreme Judicial Court, a Petition to Establish the Truth of the Exceptions.

QUESTIONS PRESENTED

1. Whether the said two statutes, chapter 231, sections 113 and 117, as applied, are valid, or, on the contrary, are repugnant to the Fourteenth Amendment to the Constitution of the United States.

2. Whether, after a judge of the Superior Court has issued an order preventing the appellant from continuing with the prosecution of his actions at law, and the appellant, under the provisions of the first statute, chapter 231, section 113, has claimed and presented to the said judge exceptions to that order, this first statute, section 113, may be so applied, consistent with the Fourteenth Amendment, as to authorize the said judge to deny the appellant the right to have the said exceptions received, filed or docketed (thereby denying the appellant also the right to file a Petition to Establish the Truth of the said exceptions in the Supreme Judicial Court, as provided for by the second statute, section 117), upon the ground that the said exceptions are frivolous, unimportant and superfluous, without affording the appellant a hearing of any kind, and without permitting the appellant to offer evidence that the said

exceptions are not frivolous, unimportant or superfluous, but on the contrary, are very vital to the preservation of the appellant's right to continue with the prosecution of the said actions at law.

3. After the Supreme Judicial Court has found that the exceptions referred to in Question Presented No. 2 were not frivolous, unimportant or superfluous, whether, consistent with the Fourteenth Amendment, the said two statutes, chapter 231, sections 113 and 117, may be so applied as still to deny the appellant the right to have the said exceptions received, filed and docketed, thereby to deny the appellant also the right to file a Petition to Establish the Truth of the said exceptions in the Supreme Judicial Court, as provided for by the second statute, section 117, upon the ground, entirely different from the grounds of frivolity, unimportance and superfluity, that, in the meantime, the Supreme Judicial Court has disposed of the said actions at law by issuing rescripts or judgments, as to which appeals are pending in this Supreme Court of the United States.

4. Whether, consistent with the Fourteenth Amendment, the said two statutes, chapter 231, sections 113 and 117, may be so applied as: first, to authorize the Superior Court to issue judgments and executions in behalf of the appellant's adverse parties in actions at law not yet terminated, and while exceptions relating to the said actions at law are still pending in the Supreme Judicial Court; and, secondly, to authorize the Supreme Judicial Court to dismiss the appellant out of Court upon the ground that, subsequent to the issuance of the said judgments and executions, the Supreme Judicial Court has disposed of the said actions at law by issuing rescripts or judgments, as to which appeals are pending in this Supreme Court of the United States.

STATEMENT OF THE CASE

Introduction

As appears from page 7 of the Jurisdictional Statement in the before-mentioned case, No. 694, October Term, 1954, the appellant, both individually and as administrator of the estate of his wife, Lucy L. Rines, is the plaintiff in sixteen actions at law in the Superior Court of the Commonwealth of Massachusetts. These sixteen actions were consolidated for trial and, as so consolidated, were tried to a jury. The trial terminated in directed verdicts for the defendants. In several instances, the verdicts were directed after the jury had found for the plaintiff. In other instances, the judge did not permit the cases even to get as far as the jury.

The appellant saved exceptions, and filed successively four bills of exceptions, described on pages 15 and 16 of the Jurisdictional Statement, No. 694, October Term, 1954. For the purposes of the present two appeals, it will suffice to refer only to the "Second Substitute Consolidated Bill of Exceptions" and the "Amended Second Substitute Consolidated Bill of Exceptions", filed pursuant to written orders of the judge of the Superior Court dated, respectively, January 8, 1951, and July 2, 1953. The "Second Substitute Consolidated Bill of Exceptions" conformed fully to the order, dated January 8, 1951. The "Amended Second Substitute Consolidated Bill of Exceptions" conformed to the order dated July 2, 1953, but not fully, because full compliance with the order of July 2, 1953 would have rendered the "Amended Second Substitute Consolidated Bill of Exceptions" contrary to the truth.

With the "Second Substitute Consolidated Bill of Exceptions", the appellant filed two motions: one, that the

"Second Substitute Consolidated Bill of Exceptions" be substituted for the original bill of exceptions; and the other, that the "Second Substitute Consolidated Bill of Exceptions" be allowed. The said judge of the Superior Court, however, has never formally either allowed or disallowed the "Second Substitute Consolidated Bill of Exceptions", he has refused to hear the petitioner upon these two motions relating thereto, and he has also refused either to grant or deny either of these two motions.

The appellant, therefore, under the provisions of the second statute, section 117, filed his Petition to Establish the Truth of Exceptions, No. 11,437, contained in the "Second Substitute Consolidated Bill of Exceptions". This, however, the Supreme Judicial Court, on November 5, 1954, dismissed, *Rines, Petitioner,* 331 Mass. 714 (Advance Sheets, 1954, page 819), reproduced as Appendix A, commencing with page 31, of the Jurisdictional Statement, No. 694, October Term, 1954.

An appeal from the dismissal, by the Supreme Judicial Court, of the Petition to Establish the Truth of Exceptions, No. 11,399, contained in the "Amended Second Substitute Consolidated Bill of Exceptions" is before this Court at No. 188, October Term, 1955.

The further appeal, No. 187, October Term, 1955, is from the refusal of the Supreme Judicial Court to issue an order of notice upon a Petition for a Writ of Mandamus, No. 11,458, seeking to compel the judge of the Superior Court to take action the lack of which caused the Supreme Judicial Court to dismiss the Petitions to Establish the Truth of Exceptions, Nos. 11,399 and 11,437. This is described more fully on pages 11 (second paragraph) and 14 (the first complete paragraph) of the Jurisdictional Statement in No. 187, October Term, 1955.

The Judge of the Superior Court, on December 28, 1953, Issued Arbitrary and Capricious Orders That, However, Have Nevertheless Now Been Approved by the Supreme Judicial Court.

On December 28, 1953, the judge of the Superior Court issued orders, without opinion, that were purely arbitrary and capricious.

Among these were orders dismissing "all bills of exceptions". The opinion, Appendix A, page 20, *infra,* mentions also additional orders, denying motions filed by the appellant. Among these was an order denying a motion by the appellant to amend the records of the Superior Court, in order to render them accurate and conformable to the truth.

Pursuing the remedy provided *(Sharpe, Petitioner,* 318 Mass. 782) for obtaining a review of an order *dismissing* a bill of exceptions (as distinguished from a *disallowance* thereof, for which, as before stated, page 5, *supra,* the remedy is to file a Petition to Establish the Truth of Exceptions, under the provisions of the second statute, section 117), the petitioner alleged exceptions to that order of dismissal, under the provisions of the first statute, section 113, and filed the exceptions with the clerk of the Superior Court, after which he presented the exceptions to the judge of the Superior Court.

Thereupon, under the provisions of the said first statute, it became the duty of the judge of the Superior Court to hear the parties, in order to determine whether the exceptions are conformable to the truth, and, if he should find that the exceptions are conformable to the truth, to allow them.

The judge of the Superior Court refused, however, to perform any part whatever of this duty. Instead, on January 20, 1954, he issued the following order (see the footnote, Appendix A, page 17, *infra*):

Order

> In order to protect the records of the court from frivolous, unimportant, or superfluous papers it is ordered that no more papers be received, filed or docketed in the above-entitled cases unless the court shall so order.

This order was issued without a hearing of any kind, and without permitting the appellant to offer evidence that the said exceptions were not frivolous, unimportant or superfluous, but, on the contrary, were very vital to the preservation of the appellant's right to continue with the prosecution of his actions at law.

Again pursuing the remedy provided by the said first statute, section 113, the appellant thereupon alleged an exception to this order of January 20, 1954. He was unable to file the exception with the Clerk of the Superior Court, however, because the Clerk, obedient to the said order of January 20, 1954, naturally refused to receive, file or docket this exception. The appellant thereupon requested the judge of the Superior Court to issue an order, modifying the said order of January 20, 1954, so as to authorize the Clerk of the Superior Court to receive, file and docket this exception, but the judge of the Superior Court denied this request.

The appellant, therefore, was without remedy, and this the opinion of the Supreme Judicial Court (Appendix A, page 21, *infra*) admits:

> We are of opinion that in these circumstances a petition for a writ of mandamus lies, there being no other remedy open to the petitioner to preserve his exceptions if any to the entry of this order.*

No. 11,495

The appellant accordingly filed the Petition for a Writ of Mandamus to direct the Justices of the Superior Court to vacate, set aside and annul the said order of January 20, 1954. It was necessary, of course, formally to join the said Clerk as a respondent. The statement has already been made, page 4, *supra*, that the federal questions were raised in that Petition for a Writ of Mandamus.

The Petition for a Writ of Mandamus came up, in the first instance, before a single justice of the Supreme Judicial Court, who sustained demurrers. The appellant excepted.

One of the present two appeals before this Court is from the overruling of these exceptions by the Supreme Judicial Court in the case numbered No. 11,495 in the Supreme Judicial Court.

The Opinion of the Supreme Judicial Court, No. 11,495.

Since the opinion of the Supreme Judicial Court, overruling these exceptions, impliedly disapproves the holding of the judge of the Superior Court that the exceptions were

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* Though this is immediately followed by the further statement that

> Nothing we hold here however is inconsistent with what we said in *Rines v. Justice of the Superior Court*, 330 Mass. 368,

the actual fact is that the ruling in that earlier case, as appears from the quotation on page 12 of the Jurisdictional Statement, No. 694, October Term, 1954, was quite opposed to the present opinion of the Supreme Judicial Court. It was there held, contrary to the present holding, that the appellant's remedy was, not mandamus, but a Petition to Establish the Truth of Exceptions. As appears from page 14 of the Jurisdictional Statement, No. 187, October Term, 1955, this was also the reason assigned by the single justice of the Supreme Judicial Court for his refusal to issue the order of notice upon the appellant's Petition for a Writ of Mandamus, No. 11,458, referred to on page 8, *supra*.

frivolous, unimportant or superfluous, the record therefore now establishes that the action of the judge of the Superior Court, in denying the appellant the right to have his exceptions received, filed and docketed, actually was entirely arbitrary and capricious, and consequently constituted a denial of the appellant's constitutional rights.

The opinion of the Supreme Judicial Court holds, however, that the appellant is nevertheless not entitled to any relief. This was because (Appendix A, page 22, *infra*),

> From what we have said hereinbefore it is plain that all matters about which the petitioner complained prior to and *after* the entry of this order *now* have been considered in one form or another and disposed of by this Court (italics supplied).

The *after* and the *now* are italicized in this passage, because they constitute admissions by the Supreme Judicial Court that the issues raised by the said exceptions were *not* yet considered and disposed of by the Supreme Judicial Court on the date of the said order, January 20, 1954.

The Supreme Judicial Court thus holds, therefore, that, though the said order of the judge of the Superior Court, was utterly invalid and void on its date, it has *now, after* that date, suddenly become valid.

It is believed, however, that the said order of January 20, 1954 was at least premature. Being originally premature, it has always remained premature.

It is Not True, However, That All Matters Had Been Disposed of by the Supreme Judicial Court.

The opinion (Appendix A, page 17, *infra*), contains a number of inadvertently inaccurate statements of fact, but the appellant would prefer not to become sidetracked into pointing them out here. Several of the statements must,

however be discussed, because they bear directly on the issues involved on these appeals.

It is by no means true that "all matters * * * have been considered * * * and disposed of by this Court." Contrary to this holding of the Supreme Judicial Court, a number of the matters covered by the appellant's unreceived, unfiled and undocketed exceptions have not, even up to the present time, received any consideration or disposition of any kind.

One such matter, for example, is the "Second Substitute Consolidated Bill of Exceptions", referred to on pages 7-8, *supra*. The Supreme Judicial Court has held, as explained on pages 2 (second paragraph), 9 and 10 of the Jurisdictional Statement in No. 187, October Term, 1955, that "if" the judge of the Superior Court has ever permitted that "Second Substitute Consolidated Bill of Exceptions" "to be filed or to stand as a substitute for or an amendment of the original bill" of exceptions, then it has been disallowed. The petitioner has shown, however, that that "if" is contrary to fact.

The actual facts are that the judge of the Superior Court has never either allowed or disallowed this "Second Substitute Consolidated Bill of Exceptions," and he has never taken any action at all with respect to either of the two motions relating thereto described on pages 7-8, *supra*.

All the action that the judge of the Superior Court has ever taken with respect to that "Second Substitute Consolidated Bill of Exceptions" was to dismiss it, along with "all bills of exceptions", on December 28, 1953.

Though it is impliedly admitted by the Supreme Judicial Court itself, as pointed out on pages 11-12, above, that the appellant's exceptions to this dismissal were not frivolous,

unimportant or superfluous, the appellant is nevertheless still denied the right to have his exceptions received, filed or docketed. If those exceptions were received, filed or docketed, the way would become cleared for his obtaining a ruling upon his "Second Substitute Consolidated Bill of Exceptions". Until those exceptions are received, filed, and docketed, he can not obtain that ruling, and this prevents the petitioner from completing the prosecution of his actions at law.

Another matter (as one further illustration) covered by the appellant's unreceived, unfiled and undocketed exceptions, and that has not received any consideration or disposition whatever by the Supreme Judicial Court, relates to orders of the judge of the Superior Court denying the appellant's motion, mentioned on page 9, *supra*, to amend the records of the Superior Court, in order to have them conform to the truth. Since the records of the Superior Court import verity, and cannot be contradicted in any collateral proceeding, *Bryer v. American Surety Company of New York*, 285 Mass. 336, 337, it is of very great importance that they be corrected, at a time when correction is still possible.

No. 11,508

Even before the Supreme Judicial Court had allegedly "considered" and "disposed" of "all matters about which the petitioner complained", the respondents named in the case numbered No. 11,508 in the Supreme Judicial Court obtained judgments and executions in the Superior Court. These, too, were entirely premature, to say the very least.

The other of the said two appeals before this Court is from the overruling, by the Supreme Judicial Court, of

the appellant's exceptions to the denial of petitions to vacate these judgments and to stay and supersede these executions.

THE OVERRULING OF THE EXCEPTIONS, NO. 11,495 AND NO. 11,508, WAS IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The appellant has not, either in the Superior Court or the Supreme Judicial Court, obtained the "basic requirement of due process", namely the fair hearing, referred to by this Court in the *Matters of Lee Roy Murchison, and John White,* Petitioners, No. 405, October Term, 1954, May 16, 1955. The appellant has been driven out of court by a ruling that his exceptions are frivolous, unimportant and superfluous, without being heard on that point, and without being allowed to offer evidence in disproof of that ruling.

As applied by the Supreme Judicial Court, therefore, the said two statutes, sections 113 and 117, as demonstrated on pages 20-22 of the Jurisdictional Statement, No. 694, October Term, 1954, have deprived the appellant, both in the Superior Court and the Supreme Judicial Court, contrary to due process, of a hearing, at which to present evidence; he has been denied the equal protection of the laws; and his privileges and immunities, as a citizen of the United States, have been abridged.

THE QUESTIONS INVOLVED ARE SUBSTANTIAL

Attention is invited to the discussion on pages 27 to 30 of the Jurisdictional Statement in the Appeal, No. 694, October Term, 1954.

In addition to what is stated there, the appellant would make the further observation that, if this Court, entertaining jurisdiction over a single one of the appellant's several appeals now before it, should reverse the Supreme Judicial Court upon the ground that the appellant has been denied his constitutional rights, he will still be without remedy unless, at the same time, the decisions in the present two appeals, from the cases numbered in the Supreme Judicial Court No. 11,495 and No. 11,508, are also reversed. Unless the decision in No. 11,495 is reversed, the appellant will find himself unable to proceed further in either the Superior Court or the Supreme Judicial Court, because "all bills of exceptions" will still remain dismissed; and until the decision in No. 11,508 is reversed, the adverse judgments that the appellant has sought to vacate, and the executions that he has sought to stay and supersede, will similarly also still remain in full force and effect.

It is therefore respectfully submitted that the Supreme Court of the United States has jurisdiction of these appeals, and that substantial federal questions are presented.

Respectfully submitted,

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APPENDIX A

THE OPINION OF THE SUPREME JUDICIAL COURT IN NO. 11,495, DATED APRIL 18, 1955

DAVID RINES, administrator, & another vs. CLERK OF THE COURTS FOR THE COUNTY OF NORFOLK & others.

Suffolk. February 8, 1955.—April 18, 1955.

Present: QUA, C.J., LUMMUS, WILKINS, & COUNIHAN, JJ.

Practice, Civil, Termination of litigation. *Superior Court*, Records, Termination of litigation. *Mandamus.*

Case heard by *Ronan*, J., in the Supreme Judicial Court for the county of Suffolk.

COUNIHAN, J. This is a petition by David Rines as administrator and individually (hereinafter called the petitioner) for a writ of mandamus to direct the justices of the Superior Court to vacate, set aside, and annul an order entered on January 20, 1954,[1] by one of the judges of that court that no more papers be received or docketed in sixteen tort actions hereinafter referred to, and to direct the judge who entered the order to disqualify himself from further participation in any matters arising out of said actions. The petition also seeks to require and direct the clerk of the courts to receive, file, and docket certain papers which the petitioner alleges are relevant to preserve exceptions to the entry of such order in said tort actions. The respondents filed identical demurrers the first ground of which is set forth in the margin.[2] The demurrers were sustained by the single justice after hearing. The case is here upon exceptions of the petitioner to the action of the single justice. There was no error.

[1] "In order to protect the records of the court from frivolous, unimportant, or superfluous papers it is ordered that no more papers be received, filed or docketed in the above-entitled cases unless the court shall so order."

[2] "1. The allegations contained in the petition do not state any ground upon which the relief requested can be granted."

This petition arises out of proceedings in connection with the trial of sixteen tort actions begun by the petitioner in the Superior Court in 1945 to recover damages for the conscious suffering and death of Lucy L. Rines, his wife. The tort actions were grounded upon negligence in the care and treatment of his wife by certain doctors, nurses, and a hospital. The tort actions were tried together in 1948 before a judge and jury. The record is not entirely clear but it appears that the jury returned verdicts for the plaintiff in two of the cases, and that verdicts were entered for the defendants in the other cases by order of the judge.

During the years which followed the petitioner filed four different bills of exceptions in the Superior Court. They are titled and numbered for convenience in the order of their filing: (1) plaintiff's consolidated bill of exceptions, (2) plaintiff's substitute consolidated bill of exceptions, (3) plaintiff's second substitute consolidated bill of exceptions, and (4) plaintiff's amended second substitute consolidated bill of exceptions. None of the bills of exceptions has ever been before us except upon a petition to establish the truth of the exceptions therein. While the allowance of these bills of exceptions was pending, the judge on motion granted a new trial of the actions in which there were verdicts for the plaintiff and these actions are now pending in the Superior Court.

Since the trial more than seven years ago proceedings arising out of the tort actions have been before us in one form or another at least eleven times.

Cases Nos. 11207 and 11208 on the docket of this court were petitions to establish the truth of exceptions to orders of the judge allowing motions for new trials in the two tort actions in which there were verdicts for the plaintiff. These petitions were filed on July 10, 1952, and after hearing were

dismissed by order of the full court on October 10, 1952, on the ground that the exceptions did not appear to be meritorious.

Failing in this the petitioner filed a petition for a writ of mandamus and a petition for a writ of certiorari to vacate, set aside, and annul the orders allowing the motions for new trials in those cases. After a hearing these petitions were dismissed. They are reported in *Rines* v. *Justices of the Superior Court*, 330 Mass. 368. Appeals were dismissed by the Supreme Court of the United States for want of a substantial Federal question. 346 U. S. 919; rehearing denied 347 U. S. 908.

Cases Nos. 11398 and 11399 on the docket of this court were petitions to establish the truth of exceptions contained in bill numbered 3 and in bill numbered 4. G. L. (Ter. Ed.) c. 231, § 117. After a hearing by the full court the petitions were dismissed by order of the full court on March 22, 1954.[3]

Two other petitions seeking to establish the truth of exceptions contained in bill numbered 1 and in bill numbered 3 were heard and dismissed. They are reported in 331 Mass. 714.

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[3] "After hearing, the court orders that the petition be, and the same is, hereby dismissed for the reason that exceptions will not lie to action by the judge upon the correctness of a previous bill of exceptions. *Barnett, petitioner*, 240 Mass. 228. *Thorndike, petitioner*, 250 Mass. 408. *Weymouth, petitioner*, 251 Mass. 359, 361-362. *Commonwealth v. Kossowan*, 265 Mass. 436" (No. 11398).

"After hearing, the court orders that the petition be, and the same is, hereby dismissed for the reason that the bill of exceptions establishment of which is sought, to wit, plaintiff's so called amended second substitute consolidated bill of exceptions, does not appear to be either an original bill of exceptions or an original bill of exceptions as amended in accordance with any order of the judge. *Graustein, petitioner*, 304 Mass. 679. *Hector v. Boston Electric Light Co.*, 161 Mass. 558, 560-561. *Ryder v. Jenkins*, 163 Mass. 536, 538. See *Thorndike, petitioner*, 257 Mass. 409; *Barnard Manufacturing Co. v. Eugen C. Andres Co.*, 234 Mass. 148" (No. 11399).

Bill numbered 2 has never been before us because it never has been allowed by the judge and no petition to establish the truth of those exceptions has ever been filed. The time provided for filing such a petition has long since expired. Rule 22 of the Rules for the Regulation of Practice before the Full Court (1952), 328 Mass. 701-702.

Case No. 11458 on the docket of this court was a petition to establish petitioner's exception to the denial of an order of notice by the single justice on a petition for a writ of mandamus directing the judge to allow or disallow bill numbered 3, and to rule upon bill numbered 4. It also sought to require the judge to disqualify himself from further participation in any matters arising out of the tort actions. This petition was argued at the March sitting of the full court and was dismissed by order of the full court on April 13, 1955.

Then we come to the case at bar, which is No. 11495 on the docket of this court and which was argued with case No. 11508 at the February sitting. Case No. 11508 will be dealt with in a separate opinion overruling exceptions to the denial of petitions to vacate judgments.

The petition in the case under consideration contains thirty-three allegations, most of them reciting facts which led to the issuance of the order of January 20, 1954. While the bills of exceptions were pending, the judge on December 28, 1953, allowed motions to dismiss all of the bills of exceptions. Six motions relating to some of the tort actions were filed by the petitioner and were denied by the judge on December 28, 1953. On January 4, 1954, the petitioner filed written claims of exceptions, and on January 18, 1954, he filed ten bills of exceptions in relation to these acts of the judge. After the issuance of the order that no more papers

be received or filed, the petitioner attempted to file innumerable motions, bills of exceptions, and affidavits, none of which was received by the clerk of the courts.

The order of the judge about which the petitioner complains was entered in the absence of the petitioner on January 20, 1954, and the petitioner received notice of it on January 25, 1954. On the same day the petitioner seasonably sought to file with the clerk of the courts sixteen claims of exceptions to the entry of the order which the clerk of the courts refused to accept because of said order. On January 26, 1954, the petitioner presented to the judge in person several motions relating to the entry of this order. He requested the judge to allow such motions or if denied to make note of the petitioner's exceptions. The judge refused to accept and act upon such motions and refused to make note of any exceptions of the petitioner. The petitioner alleges that the refusal of the clerk of the courts to receive and enter his claims of exceptions, the refusal of the judge to receive and act upon his motions, and the refusal of the judge to make note of his exceptions prevent the petitioner from getting on the record his exceptions to the entry of this order so that a suitable bill of exceptions could be prepared and filed, G. L. (Ter. Ed.) c. 231, § 113, as amended by St. 1945, c. 328, or, if necessary, a petition be prepared and filed in this court to establish the truth of exceptions under c. 231, § 117, or under Rule 22 of the Rules for the Regulation of Practice before the Full Court (1952), 328 Mass. 701-702.

We are of opinion that in these circumstances a petition for a writ of mandamus lies, there being no other remedy open to the petitioner to preserve his exceptions if any to the entry of this order. Nothing we hold here however is

inconsistent with what we said in *Rines* v. *Justices of the Superior Court*, 330 Mass. 368.

While we hold that this petition is properly before us, we nevertheless are of opinion that the demurrers were correctly sustained by the single justice. We have recited at length the nature and extent of the litigation indulged in by the petitioner in the seven years which have elapsed since the trial of these tort actions. The petition as appearing in the record recites further litigation which the petitioner has undertaken or proposes to undertake in connection with these tort actions. From what we have said hereinbefore it is plain that all matters about which the petitioner complained prior to and after the entry of this order now have been considerd in one form or another and disposed of by this court. The judge was therefore right in concluding that the time had arrived to terminate the litigation except for the two cases still pending for trial in the Superior Court.

The entry of such order was within the jurisdiction of the judge. A similar order was considered in *Thorndike, petitioner*, 257 Mass. 409, where at page 411 the court said, "That order presents no error in the circumstances here disclosed. 'The policy of the law requires that litigation be terminated within a reasonable time and not protracted at the mere option of the parties,' or of one of them. . . . *Boston Bar Association* v. *Casey*, 227 Mass. 46, 48-49. . . . The court has power to protect its records from irrelevant, unimportant or superfluous papers and to take rational steps to end litigation. This order was directed to that end and was warranted." Because of what was said in the order of the full court dismissing case No. 11458 we do not consider other contentions of the petitioner.

Exceptions overruled.

APPENDIX B

STATUTES OF THE COMMONWEALTH OF MASSACHUSETTS, GENERAL LAWS, TERCENTENARY EDITION

Chapter 231, section 113, as amended by St. 1945, c. 328, Vol. II, page 2876

"Exceptions may be alleged by any party aggrieved by an opinion, ruling, direction or judgment of the supreme judicial court, of the superior court, or of the land court, rendered upon any matter of law in any civil cause, according to the course of the common law or otherwise, tried by a jury or heard by the court, or upon a motion for a new trial. The exceptions shall be reduced to writing in a summary manner and filed with the clerk, and notice thereof shall be given to the adverse party, in civil cases tried by a jury, within twenty days after the verdict is rendered, and in cases tried without a jury, within twenty days after the notice of the decision has been received, unless further time is allowed by the court. The presiding justice shall thereafter, upon their presentation to him by any party to the action, examine the exceptions, and after hearing the parties, determine whether they are conformable to the truth. The excepting party may be allowed to make such amendments to his bill of exceptions as will make it a more accurate statement of the exceptions originally filed by him. If the presiding justice finds that the exceptions, with any amendments thereof thus allowed, are conformable to the truth, he shall allow them. The presiding justice may, if, in his opinion, a bill of exceptions is filed in good faith, and justice so requires, allow such bill of exceptions, although the excepting party or his attorney failed, through inadvertence, to comply with all of the provisions of this section. If, through inadvertence, a party who has duly claimed exceptions failed to file a bill of exceptions within said twenty days or within such further time as may have been

allowed, the presiding justice may, before final judgment, upon motion after notice and hearing, allow a bill of exceptions to be filed and may allow such bill of exceptions."

Chapter 231, section 117, Vol. II, page 2878

"If the presiding justice, or another justice acting under section one hundred and fifteen, disallows or fails to sign and return the exceptions or alters any statement therein, and either party is aggrieved thereby, the truth of the exceptions presented may be established before the full court upon petition stating the grievance, and thereupon, the truth of the exceptions being established, they shall be heard, and the same proceedings taken, as if the exceptions had been duly allowed and entered. The supreme judicial court shall make rules for settling the truth of exceptions alleged and not allowed."

NOV 29
HAROLD B. WILL

Supreme Court of the United States

October Term, 1955

No. 348

DAVID RINES, individually and as administrator of Estate of Lucy L. Rines,
Appellant,
v.
THE HONORABLE JUSTICES OF THE SUPERIOR COURT
and
WILLIS A. NEAL, as he is clerk of the Superior Court in and for the County of Norfolk,
Respondents.

No. 11,495

On the Docket of the Supreme Judicial Court of the Commonwealth of Massachusetts.

DAVID RINES, Administrator of the Estate of Lucy L. Rines,
Appellant,
v.
MARY GILMORE,
Respondent.

DAVID RINES,
Appellant,
v.
BETH ISRAEL HOSPITAL ASSOCIATION,
Respondent.

DAVID RINES,
Appellant,
v.
ESTHER BURGEN,
Respondent.

DAVID RINES,
Appellant,
v.
MARY GILMORE,
Respondent.

No. 11,508

On the Docket of the Supreme Judicial Court of the Commonwealth of Massachusetts.

APPEALS FROM THE SUPREME JUDICIAL COURT FOR THE COMMONWEALTH OF MASSACHUSETTS

PETITION FOR REHEARING

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Of Counsel.

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v.
ESTHER BURGEN,
Respondent.

DAVID RINES,
Appellant,
v.
MARY GILMORE,
Respondent.

No. 11,508
On the Docket of the Supreme Judicial Court of the Commonwealth of Massachusetts.

PETITION FOR REHEARING

The appellant prays that this Court grant rehearing of its order, dated November 7, 1955, dismissing, for want of a substantial federal question, his two appeals in the above-entitled suit.

This Petition for Rehearing is filed because of the tremendous importance (apparently not appreciated by this Court) of the issues raised by these appeals to litigants in the Commonwealth of Massachusetts. As is made plain on pages 8 to 13 of the Jurisdictional Statement in No. 694, October Term, 1954, the appellant happens to be only one of a large number of litigants in the Commonwealth of Massachusetts who:

First, are denied their right to trial by jury (granted to other litigants) by an arbitrarily directed verdict of a judge of the Superior Court; and

Secondly, are then denied their right (granted to other litigants) to review of this arbitrary action, in the Supreme Judicial Court, merely because of the refusal of the judge, prejudiced though he may be in favor of or against one side or the other to the litigation, either to allow or disallow a bill of exceptions (see the last complete paragraph on page 11 of the said Jurisdictional Statement, No. 694). In the present instance, the prejudice was so open that the judge of the Superior Court excluded the appellant from a hearing that he conducted in secret, in a locked hearing room (see the record of *Rines, Administrator v. Justices of the Superior Court*, 346 U. S. 919, rehearing denied, 347 U. S. 908, discussed on pages 25 and 26 of the Jurisdictional Statement in the said No. 694).

Litigants are usually compelled helplessly to submit to this practice because of the expense and effort involved

in bringing the matter before this Court. The present appellant, on the other hand, has not permitted either expense or effort to stand in his way of testing the validity of this practice, and he submits that this Court ought to assume jurisdiction of these appeals, in order to settle, once and for all, whether this practice in the Commonwealth of Massachusetts is or is not violative of the Fourteenth Amendment.

It will be just as important for this Court to decide formally that this practice in Massachusetts is not violative of the Fourteenth Amendment as that it is so violative. This is because such a decision will put the matter at rest, for all time, in the future, and litigants will thereafter know that it will be futile for them to go to any effort and expense further to question the matter.

A mere dismissal of these appeals, upon the ground of the want of a substantial federal question, can not have that effect. Such mere dismissal, it is believed, does not comply with the intention of Congress, conferring upon this Court jurisdiction over these appeals. Attention is invited to the dissenting opinion, *Linehan v. Waterfront Commission of New York Harbor*, 347 U. S. 439: "The Congress carved out a group of cases, of which this is one, that comes here as of right".

In the present case, not only has the judge of the Superior Court directed verdicts, and then refused either to allow or disallow any of four bills of exceptions, but also he has dismissed all bills of exceptions, and thereafter, without a hearing, and without receiving evidence, he has issued an order (page 10 of the Jurisdictional Statement)

preventing the appellant from even filing exceptions to this order, thereby shutting off all possibility of review.

The ground alleged for this order was that the said exceptions were "frivolous, unimportant, or superfluous"; but the appellant has proved, as is even admitted by the Supreme Judicial Court, that the said exceptions were not "frivolous, unimportant, or superfluous", but were absolutely essential to saving the appellant's rights in the litigation. (The said judge, however, was only following the precedent of another unfortunate litigant, *Thorndike, petitioner*, 257 Mass. 409, approved by the Supreme Judicial Court, and cited in its opinion, see page 22 of the Jurisdictional Statement.)

The appellant has many times charged prejudice against the said judge of the Superior Court. He first made that charge at an early stage of the litigation, but the Supreme Judicial Court ignored that charge, and this Court dismissed the appellant's appeals, *Rines, Administrator v. Justices of the Superior Court*, 346 U. S. 919, rehearing denied, 347 U. S. 908, *supra*. The appellant was therefore compelled to continue to submit to the prejudices of this judge, though he continually repeated the charge of prejudice, until he has now been driven out of Court altogether.

It is the appellant's contention that no judge of the Superior Court, whether or not biased, should be given the power that he now has arbitrarily and capriciously to direct a verdict, then refuse either to allow or disallow a bill of exceptions, and finally even to dismiss all bills of exceptions, without hearing, and without receiving evidence. It is submitted that any statute conferring such power is violative of the Fourteenth Amendment.

It is respectfully submitted, therefore, that this Court ought to reconsider its order dismissing the appeals in this suit.

Respectfully submitted,

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RINES AND RINES,
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Of Counsel.

Certificate of Counsel

I hereby certify that the foregoing petition is presented in good faith, and not for purposes of delay.

DAVID RINES.

No. 348. RINES, ADMINISTRATOR, *v.* JUSTICES OF THE SUPERIOR COURT OF MASSACHUSETTS ET AL. Appeal from the Supreme Judicial Court of Massachusetts. *Per Curiam:* The appeal is dismissed for want of a substantial federal question. *David Rines* and *Robert H. Rines* for appellant. Reported below: 332 Mass. 527, 126 N. E. 2d 124.